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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,392	06/20/2007	Klaus Worgull	3564	1516
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MICHAEL J. STRIKER 103 EAST NECK ROAD HUNTINGTON, NY 11743			EXAMINER HALL, COREY JOHN	
			ART UNIT 3743	PAPER NUMBER
			MAIL DATE 07/01/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/563,392

Applicant(s)

WORGULL ET AL.

Examiner

COREY HALL

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.
2. Applicant's arguments filed 04/16/2009 have been fully considered but they are not persuasive. On pages 7-8 the Applicant argues that the rejection under 35 U.S.C. 102 does not account for the feature that the invention has a switch which can be actuated from either the handle or the barrel using one finger. Thaler et al. shows in figure 4 a hair dryer being held at the barrel and the electrical switch being activated by one finger. It is also shown by figure 4 that if the user were to hold the hair dryer by the handle the electrical switch could be activated by one finger. Claim 1 as amended continues to read on the hair dryer disclosed by Thaler et al. On pages 8-9 the Applicant argues that the rejection under 35 U.S.C. 103 using Thaler et al. in view of Wilson should be withdrawn because of the amendment to claim 1 and repeats the argument made above regarding a commonly actuated switch configured to be actuated from a first or second handle grip. However, claim 1 remains rejected because Thaler et al. discloses an electrical switch that can be activated from a first or second handle grip using one finger. On page 9 the Applicant argues that the rejection under 35 U.S.C. 103 using Thaler et al. in view of Berryman should be withdrawn because, while if combined they would reasonably result in a one- or two- legged toggle switch, they would not teach a single switch being activated from a first or second handle grip using one finger. However, as stated above, Thaler et al. does disclose an electrical switch that can be activated from a first or second handle grip using one finger.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 5-7, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Thaler et al. (US Patent No. 5,727,331).

5. Regarding claim 1, 5-7, 9, Thaler et al. discloses a hand hair dryer (30, fig. 1, col. 2, line 34) comprising: an electric fan (col. 2, line 37) and an electric heater (col. 2, line 38), located in line with the electric fan for generating an air stream from a barrel portion (37, fig. 1), in which the fan is located in a housing portion (13, fig. 1, “vent” col. 2, line 47) and the heater (col. 2, lines 36-38 describing the hair dryer as including a heater though the heater is not shown in fig. 1) is located inside the barrel portion (37, fig. 1), that on the housing portion (13, fig. 1), a first handle grip (11, fig. 1) that has operator control elements (20, fig. 1) is located at an angle of approximately 90° (fig. 1) to the barrel portion (37, fig. 1), wherein the barrel portion (37, fig. 1) is embodied as a second handle grip (10, fig. 1) and a commonly actuatable cold air combination switch (20, fig. 1, “switch to control the air flow rate and/or temperature of the dryer” abstract, lines 11-12) is located between the first handle grip (11, fig. 1) and the second handle grip (10, fig. 1), and is configured to be actuated selectively from the first (11, fig. 1) or second (fig. 4 showing a user’s hand on the second handle) handle grip, using one finger (27, fig. 4), the second handle grip (10, fig. 1 showing the second handle grip being cylindrically shaped) is shaped cylindrically, the first (11, fig. 1) and second (10, fig. 1) handle grips are each provided with a

nonslip surface (12, 23, fig. 1), a first cold air switch (120, fig. 5, col. 1, lines 63-65) is located on the first handle grip (111, fig. 5), and a second cold air switch (127, fig. 5) is located on the second handle grip (110, fig. 5), and a pushbutton (20, fig. 1, col. 1, lines 54-65 describing the temperature of the hair dryer being controllable through electrical switches) is provided as the cold air combination switch.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thaler et al. (US Patent No. 5,727,331) in view of Wilson (US Patent No. 4,629,864).

10. In regards to claims 2-4, Thaler et al. discloses the claimed invention, except for the second handle grip is heat-insulated, the barrel portion is heat-insulated from the outside, and the second handle grip and the barrel portion are embodied as heat-insulated from the outside. However, Wilson teaches a second handle grip (7, fig. 4) is heat-insulated (19, fig. 4, "insulating sleeve 19" col. 4, line 4), the barrel portion (6, fig. 4) is heat-insulated (19, fig. 4, col. 4, lines 3-4) from the outside, and the second handle grip (7, fig. 4) and the barrel portion (6, fig. 4) are embodied as heat-insulated (19, fig. 4 showing the heat insulation being on the outside of barrel portion 6 and 16, fig. 4, "ribs 16" col. 3, line 64 and col. 2, lines 9-14 describing the ribs as keeping the outer surface much cooler) from the outside in order to make it much cooler for an operator to touch (col. 2, lines 12-14). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the Thaler et al. reference, to include the second handle grip is heat-insulated, the barrel portion is heat-insulated from the outside, and the second handle grip and the barrel portion are embodied as heat-insulated from the outside, as suggested and taught by Wilson, for the purpose of making it much cooler for an operator to touch. The Applicant is combining prior art elements according to known methods to yield predictable results. The Applicant is combining a hand held dryer having two handle grips as disclosed by Thaler et al. with a hand held dryer having two handle grips where the handle grip on the barrel is heat insulated as taught by Wilson according to known methods to yield the

predictable result of the handle grip on the barrel portion being cooler for an operator to touch. One would be motivated to combine Thaler et al. with Wilson because Wilson teaches a hand held dryer with heat-insulation on the barrel portion to make it cooler to an operator's touch which would reduce the likelihood of burning or discomfort from the heat and the barrel portion and second handle grip of Thaler et al. would benefit from heat-insulation in the same way.

11. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thaler et al. (US Patent No. 5,727,331) in view of Berryman (US Patent No. 3,612,824).

In regards to claims 10, 11, and 12, Thaler et al. discloses the claimed invention, except for a one-legged toggle switch is provided as the cold air combination switch, a two-legged toggle switch is provided as the cold air combination switch, and a centrally located warm-air conduit and a coaxial cold-air conduit are provided in the barrel portion, and the central warm-air conduit is formed by a hollow-cylindrical barrel, in which the heater is located; that the coaxial cold-air conduit is formed by the barrel portion and the central warm-air conduit; that the central warm-air conduit and the coaxial cold-air conduit are acted upon by a cold air stream of the fan, and by means of the heater, a warm air stream outlet is effected out of the central warm-air conduit, and a cold air stream is effected from the coaxial cold-air conduit. However, Berryman teaches a one-legged toggle switch (17, fig. 1) is provided as the cold air combination switch (col. 2, lines 25-26), a centrally located warm-air conduit (77, fig. 3) and a coaxial cold-air conduit (74, fig. 3) are provided in the barrel portion (73, fig. 3), and the central warm-air conduit (77, fig. 3) is formed by a hollow-cylindrical barrel (71, fig. 3), in which the heater (108, fig. 3) is located; that the coaxial cold-air conduit (74, fig. 3) is formed by the barrel portion (73, fig. 3) and the central warm-air conduit (77, fig. 3); that the central warm-air conduit (77, fig. 3)

and the coaxial cold-air conduit (74, fig. 3) are acted upon by a cold air stream of a fan (53, fig. 2), and by means of the heater (108, fig. 3), a warm air stream outlet is effected out of the central warm-air conduit (77, fig. 3 showing arrows indicating the air flow), and a cold air stream is effected from the coaxial cold-air conduit (74, fig. 3 showing arrows indicating the air flow) in order to provide an air blower in which the temperature of the discharging air can be controlled over a wide temperature range (col. 1, lines 26-27). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the Thaler et al. reference, to include a one-legged toggle switch is provided as the cold air combination switch, a centrally located warm-air conduit and a coaxial cold-air conduit are provided in the barrel portion, and the central warm-air conduit is formed by a hollow-cylindrical barrel, in which the heater is located; that the coaxial cold-air conduit is formed by the barrel portion and the central warm-air conduit; that the central warm-air conduit and the coaxial cold-air conduit are acted upon by a cold air stream of the fan, and by means of the heater, a warm air stream outlet is effected out of the central warm-air conduit, and a cold air stream is effected from the coaxial cold-air conduit, as suggested and taught by Berryman, for the purpose of providing an air blower in which the temperature of the discharging air can be controlled over a wide temperature range. The Applicant is simply substituting one known element for another to obtain predictable results. The Applicant is simply substituting the known elements of a switch (Thaler et al., 20, fig. 1 and 120, 127, fig. 5 showing multiple switches) and a barrel portion (Thaler et al., 37, fig. 1) having a warm-air conduit as disclosed by Thaler et al. for the known elements of a one-legged toggle switch and a barrel portion having a central warm-air conduit and a coaxial cold-air conduit as taught by Berryman to obtain the predictable result of having a toggle switch and

warm-air and cold-air conduits. One would be motivated to combine Thaler et al. with Berryman because Berryman teaches a hand held dryer that can provide more control over the temperature of the discharging air which would improve the hand held dryer of Thaler et al. which also provides control over the temperature of the discharging air.

Thaler et al. as modified by Berryman discloses the claimed invention, except for the toggle switch being a two-legged toggle switch. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a switch having two legs rather than one, for the purpose of making it easier for a user to control the switch from different angles, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Choi (US Patent No. 5,155,925) discloses a hair dryer having a switch located on the barrel, Crowley (US Patent No. 4,198,557) discloses a hair dryer that can be used in a pistol-grip position or an in-line position, Moller et al. (US Patent No. 4,195,217) discloses a hair dryer having a switch located on the barrel, Springer (US Patent No. 4,232,454) discloses a hair treatment device having a switch located on the barrel between the barrel and the handle, and Levy et al. (US Patent No. 4,019,260) discloses a hair dryer having a switch located between the handle and the barrel.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to COREY HALL whose telephone number is (571)270-7833. The examiner can normally be reached on Monday - Friday, 9AM to 5PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Rinehart can be reached on (571)272-4881. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Corey Hall/
Examiner, Art Unit 3743

/Kenneth B Rinehart/
Supervisory Patent Examiner, Art Unit
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